Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-1811

JOHN DOE, JANE DOE, THOMAS M. GROST and CORA W. GROST, individually and on behalf of all others similarly situated,

Petitioners,

-vs-

CATHY E. IRWIN, Administrator and GEORGE GROSS, D.O., Medical Director, Tri-County Family Planning Center: ELINOR HOLBROOK, GILDA RICHARDSON, MARIE VANDE BUNTE, MARY KAY WICKENS and DAVID HOLDEN, M.D., Members of the Ingham Cty. Board of Health; MARY WOODS, R.N., Acting Director, INGHAM COUNTY HEALTH DEPARTMENT, and their successors in office.

Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Respondents, Cathy E. Irwin, George Grost, D.O.,Tri-County Family Planning Center, Elinor Holbrook, Gilda Richardson, Marie VandeBunte, Mary Kay Wickens, David Holden, M.D., Mary Woods and the Ingham County Health Department respectfully request that the Petition for a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 26, 1980 be denied.

QUESTIONS PRESENTED

The Ingham County Health Department operates the Tri-County Family Planning Center (the Clinic) which provides non-prescriptive and prescriptive contraceptives to individuals voluntarily seeking same. The Clinic serves minors as well as adults. Minors are served without regard to whether or not they are emancipated and are permitted to come to the center with or without parental consent. Non-prescriptive and prescriptive contraceptives are dispensed to minors both without and with parental knowledge or consent without charge for the devices and medication distributed by the Clinic.

"Rap sessions" are conducted by the clinic which are educational in nature and deal with birth control methods, responsibilities of being sexually active, and the desirability of communicating with parents and other involved in a decision to engage in sexual activities. No minor is served by the Clinic until after attending a rap session. The rap sessions are not as set forth by Petitioner "designed to influence immature minor children to use hazardous prescriptive contraceptive drugs contrary to the religious

beliefs of parents and their children." That statement by Petitioners is not supported by the record, by the opinions of the District Court, or by the opinion of the Court of Appeals. The minor has already voluntarily come to the Clinic to obtain contraceptive devices. The minor, in 89% of the cases in 1974, was already sexually active. The purpose of the rap session is educational. If no medical problems are indicated or discovered, contraceptive devices or medications are prescribed to a minor.

Contrary to the position of the parents, the District Court of the Western District of Michigan in neither opinion, 482 F. Supp. 1198 (W.D. Mich. 1977) and 441 F. Supp. 1247 (1977), found any constitutional infirmity with the practice of the Clinic with respect to the "rap sessions". The District Court, for the reasons set forth in its opinion, only prohibited the dispensing of all prescriptive and non-prescriptive contraceptive devices to unemancipated minors without parental notification and consultation. Only the County appealed the decision of the District Court. The parents did not cross-appeal the failure of the District Court to enjoin the "rap sessions". The only issue appealed to the Sixth Circuit was the District Court prohibition of the dispensing of all contraceptives to minors without parental notification. The Sixth Circuit reversed, finding *no constitutional right* in parents to be notified by the Clinic prior to dispensing contraceptives to minors voluntarily seeking same. That Court correctly determined that it is a matter for the state to determine whether such a requirement is necessary or desirable to achieve the purposes for which the Clinic was founded. Accordingly, the questions presented are not as set forth by the Petitioners, but are as follows:

1. Do parents have a *constitutional right* under the First, Ninth and Fourteenth Amendments to notification prior to the dispensing of prescriptive and

non-prescriptive contraceptive devices by a county (state) health department clinic to minors voluntarily seeking same?

2. Does a blanket requirement of notification to a minor's parents that the minor is voluntarily seeking contraceptive devices from a county (state) clinic constitute an unconstitutional invasion of the minor's right to privacy under the Ninth and Fourteenth Amendments?

3. Assuming any constitutional right of notification in parents prior to the dispensing of prescriptive and non-prescriptive contraceptives to minors, is there a compelling state interest in averting the devastating consequences of unwanted pregnancy in sexually active minors justifying the county (state's) policy of non-notification.

STATEMENT OF THE CASE

The Tri-County Family Planning Center is operated in Lansing, Michigan by the Ingham County Health Department under contract with the Michigan Department of Public Health. The Clinic serves minors as well as adults and does distribute to minors, after a thorough medical examination consistent with good medical practice (Stip. 12, 425 F. Supp. at 1202), non-prescriptive and prescriptive contraceptive devices or medications to minors with or without parental consent or consultation.

Although most facts concerning the operation of the Clinic were stipulated or undisputed, the Petitioners' presentation of those facts in their statement of the case is inaccurate and misleading.[1] Not all minors are served by

[1] A thorough and accurate summary of the material facts is completely set forth in the Opinion of the Court of Appeals. 615 F. 2d at 1163 to 1165.

the Clinic. The minimal age, by definition, is the age of menarche. Minors are refused service for medical reasons (R. 118, 119; A. 4). For 1974, the record disclosed that 623 females served were 17 years old, 466 were 16, 210 were 15, 74 were 14, 19 were 13. 89% had intercourse at least once prior to visiting the Clinic, and 10% of the minors had been pregnant at least once. (Stip. 18 & 19, 425 F. Supp. at 1202) A determination of the minor's understanding of contraceptives use and risks is made prior to dispensing (R. 155, 156, 157, A. 7, 8, 9).

The Clinic does require every minor to attend the "rap session". The rap session is educational in nature and designed to insure the minor demonstrates the knowledge and understanding of contraceptives use and drawbacks prior to dispensing of same. Parental attitudes are discussed, however, there is no statement in the record supporting Petitioners' position that religious beliefs are discussed. The references of Petitioners to their appendixes pages 18a, 19a and 21a support the thoroughness of the explanation process that is undertaken, but do not support the Petitioners' characterization of those sessions.

The Clinic does encourage the minors to involve parental participation (R. 93, 96, 98, 99, 117; A. 1, 2, 3, 4). Petitioners' representations to the contrary are incorrect on the record. The Clinic does not notify parents that their minor sexually active children are voluntarily seeking contraceptive devices, contrary to the wishes of the minors.

It is stipulated that the procedure for the distribution of contraceptives to minors constitutes good medical practice (Stip. 12, 428 F. Supp. 1202). It is further undisputed in the record that those persons receiving medical treatment generally obtain better medical care then would be available elsewhere (R. 152, 153). The nurse does not prescribe the contraceptives and the record does not so state. Although physicians do not see every patient, physi-

cians prescribe contraceptive devices which are dispensed by nurses pursuant to physician orders.[2] (R. 130)

The Clinic distributes both prescriptive and non-prescriptive contraceptive devices. The District Court enjoined distribution of all contraceptive devices to minors without parental notification. The Court of Appeals found no constitutional right in parents to notification and according reversed.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE DECISION OF THE COURT OF APPEALS FINDING NO CONSTITUTIONAL REQUIREMENT FOR PARENTAL NOTIFICATION PRIOR TO THE DISPENSING OF CONTRACEPTIVES TO MINORS VOLUNTARILY SEEKING SAME IS CONSISTENT WITH AND SUPPORTED BY THE DECISIONS OF THIS COURT WITH RESPECT TO FAMILY RIGHTS.

Petitioners' claim is grounded upon an assertion that parents have an independent constitutional right to be notified prior to the dispensing by the county (state) of any prescriptive and/or non-prescriptive contraceptive devices to sexually active minors voluntarily seeking protection from the devastating consequences of an unwanted pregnancy. The Petitioners cite the First, Ninth, and Fourteenth Amendments as support for their position and ground their claim in the decisions of this Court in *Meyer, infra, Pierce, infra, Prince, infra,* and *Yoder, infra.* The insufficiency of the parents position was succinctly

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[2]In any event, in Michigan it is legal and accepted medical practice for physicians assistants and licensed professional nurses to prescribe medications pursuant to physician supervison and direction. Op. Atty. Gen., No. 5360 (Jan. 22, 1980)

pointed out by the Court of Appeals as follows:

> "There is one fundamental difference between all the cited cases and the present one. In each of the Supreme Court cases the State was either requiring or prohibiting some activity." (615 F.2d at 1168)

The Court of Appeals went on to note that those cases were inapplicable because:

> "The State of Michigan, acting through the center and defendants, has imposed no compulsory requirements or prohibitions which affect rights of the plaintiffs." (615 F.2d at 1168)

To have a violation of the Free Exercise Clause of the First Amendment, there must be a showing of direct restraint or coercion upon the person who is asserting the right of free exercise. *Abington School District* v. *Schempp,* 374 U.S. 204 (1963). To have a violation of the Establishment Clause of the First Amendment, there must be affirmative action giving aid or preference to a particular religious group. *Meek* v. *Pittinger,* 421 U.S. 349 (1974). Neither situation exists in the instant case. It is not disputed that the Clinic is a voluntary clinic and that sexuallly active minors are not required or compelled to come to the Clinic and obtain contraceptives. The sexually active minors are even encouraged to communicate and involve their parents without being required to do so (R. 93, 96, 97, 98, 117; A. 1, 2, 3, 4). Thus, the present case is in opposite to the cases cited by Petitioners as a basis for granting certiorari.

Specifically, *Meyer* v. *Nebraska,* 262 U.S. 390 (1923) involved a state prohibition of the teaching of foreign languages to pupils who had not passed the eighth grade. *Pierce* v. *Society of Sisters,* 368 U.S. 510 (1025) addressed a statute requiring all children between the ages of 8 and 16 to attend public schools. *Wisconsin* v. *Yoder,* 406 U.S.

205 (1972) addressed the statute requiring compulsory school attendance beyond the eighth grade to age 16. *Prince* v. *Massachusetts,* 321 U.S. 158 (1944) addressed the child labor law construed to prohibit street sales or religious tracks to children. Each of those cases dealt with a specific blanket requirement or blanket prohibition for all minors within the particular State that had enacted the challenged legislation. Here there is nothing compulsory or mandatory about the Clinic. It is not a mandatory class or classes in school, nor a prohibition against certain educational processes. It is simply and solely a voluntary clinic to aid sexually active individuals, including minors, who desire to avoid the devastating consequences of an unwanted pregnancy.[3]

The activities of the Clinic are voluntary. There is no compulsion involved, nor is sexual behavior or family planning so steeped with religious implications as to be inseparable from religion or limited almost solely to religious use. *Civic Awareness of America* v. *Richardson,* 343 F. Supp. 1358, affirmed per curiam by the U.S. Court of Appeals for the Seventh Circuit on March 9, 1976 in an unpublished opinion. The Court of Appeals, in the present case, correctly rejected Petitioners' claims grounded in the First and Fourteenth Amendment. In fact the District Court impliedly rejected Petitioners claims grounded on

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[3] "The girl who has an illegitimate child at the age of 16 suddenly has 90 percent of her life's script written for her. She will probably drop out of school, even if someone else in her family helps to take care of the baby; she will probably not be able to find a steady job that pays enough to provide for herself and her child; she may feel impelled to marry someone she might not otherwise have chosen. Her life choices are few, and most of them are bad. Had she been able to delay the first child, her prospects might have been quite different . . ."

A. Campbell, *The Role of Family Planning in the Reduction of Poverty,* Journal of Marriage and the Family, Vol. 30, p. 236-245 (1968); quoted at p. 335 in J. A. Menken, *Teenage Childbearing: Its Medical Aspects and Implications for the United States Population,* Research Reports, Vol. 1. Demographic and Social Aspects, Coms'n on Population Growth and the American Future, p. 332-353, (Westoff & Parke eds., 1972).

these Amendments finding only (in its second opinion):

> ". . . the religious beliefs of the plaintiffs are implicated by the actions challenged here." 441 F. Supp. at 1251

Implicitly recognizing the weakness of their constitutional position, Petitioners present two "practical" arguments as to why this case should be taken, neither of which is constitutional in nature. The first argument is that the Clinic requires the minors to attend a "rap session". The rap session is an educational and information session prior to the dispensing of contraceptives. The parents characterize this "rap session" as "repetitious state subversion of their young children" at page 7 of their Petition. The parents then conclude that because the rap session may involve a discussion of beliefs contrary to those of Petitioners, that that session thereby violates the parents constitutional rights under the Ninth and Fourteenth Amendments in the upbringing of their children, and therefore the dispensing of the contraceptives without parental notice should be prohibited.

First, the rap session is not as characterized by Petitioners, but is as characterized by the Court of Appeals as follows:

> "The rap sessions are educational. They deal with birth control methods, the responsibilities of being sexually active and the desirability of communicating with parents and others involved in a decision to engage in sexual activities." (615, F.2d at 1163)

The record fully supports the Court of Appeals summary of the rap session. Petitioners characterization of the record with respect to the rap session as a basis for its request for the Writ of Certiorari is inaccurate and incorrect. The rap session as reflected by the record does not

provide any support for the assertion that this Court's decision in *Meyer, Pierce, Prince* and *Yoder* have suffered "emasculation".

Second, although denying the Petitioners characterization of the "rap session" that issue is not before this Court nor does it provide a basis for granting a Writ of Certiorari. The District Court, in both opinions supporting Petitioners, found no violation of any constitutional right of the Petitioners by the "rap session" and did not enjoin those sessions. The District Court only enjoined the dispensing of prescriptive and non-prescriptive contraceptives without parental notification. The Petitioners did not cross appeal and the issue of the "rap session" was not before the Sixth Circuit, and does not provide a basis for granting the Writ. The issue is the dispensing of any contraceptives to sexually active minors without parental notification. Simply put, if the county would immediately discontinue the informational "rap session" and continue to dispense contraceptives to minors without parental notification, the Constitutional issues considered by the District Court and the Court of Appeals would remain exactly the same.

The second reason urged for granting the Writ is the fact that the Clinic dispenses prescriptive, as well as non-prescriptive, contraceptives to sexually active minors. Petitioners characterize those drugs as "dangerous" prescriptive drugs, and a prize for attendance at the rap session. Page 10 of Petitioners' application. What is conveniently ignored by Petitioners is the fact that sexually active minors have already voluntarily come to the Clinic to obtain contraceptives. The existence or non-existence of the rap session does not change that fact.

Further, Petitioners' characterization of prescriptive contraceptives is inaccurate. Such side effects and contraindications that do not exist for the drugs are lowest for

minors. (R. 577, 578) Second, by definition, all prescriptive drugs involve contraindications and potential side effects, that is why they are prescriptive drugs to be dispensed pursuant to medical considerations, which the Clinic does consistent with good medical practice. The Clinic gives a thorough and complete physical examination (A. 2, 3, 4, 5, 6, 7). Furthermore, only a three-month supply is given and the recipient must return for an evaluation prior to the prescription of another supply (R. 131, 132; A. 6, 7). The potential side effects are thoroughly explained prior to using the prescription (R. 110, 112, 113, 126, 127, 128, 130, 131, 132; A. 2, 3, 4, 5, 6, 7). A determination that the minor does understand the nature and consequences of requesting and taking prescriptive contraceptives is made. (R. 155, 156, 157, A. 7, 8, 9). The parents' position, impliedly set forth in the Petition, is that the Writ should be granted because they are better able to make the medical judgments involved. That is incorrect and unsupportive of the request for the Writ. In short, the record as a whole totally supports the undisputed fact that the County's practice is consistent with good medical practice and does not support Petitioners' characterization of prescriptive contraceptives as a basis for granting the Writ.[4]

Petitioners' "scare tactics" in an attempt to obtain the

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[4] By contrast, the risks involved with teenage pregnancy are substantial: "The hazards to teenagers as a result of pregnancies are many, including an incidence of infant mortality two to three times higher, an incidence of growth-retarded newborn babies twice as high, a maternal mortality rate 60 percent higher, and an incidence of anemias and toxemias approximately 30 percent greater. Moreover, fewer teenagers get prenatal care, especially early in their pregnancy (70 percent get none in the first trimester). Besides the health risks, data show that the high school dropout rate among pregnant girls is twice that among nonpregnant females and that the risk of being unemployed or welfare dependent is greater, as is the likelihood of financial poverty per family. In addition, it can be anticipated that the number of children in the eventual families of a female who has a teenage pregnancy would be 30 percent greater."

Tyrer and Josimovich, *"Contraception and Teenagers", Clinical Obstetrics and Gynecology,* Vol. 20, No. 3, September, 1977 at 653.

Writ of Certiorari do not support their own legal argument. If there is a blanket *constitutional right* to notification of parents prior to the dispensing of all contraceptive devices to minors, and if this right of notice does not invade the minor's constitutional right of privacy in decisions affecting procreation, and if the state has not shown a compelling state interest for non-notification, the fact that one is dealing with prescriptive or non-prescriptive contraceptives as a factual matter is irrelevant. Conversely, if there is *no constitutional right* in parents to notice before the dispensing of contraceptives to sexually active minors, then the fact that some of the contraceptives are prescriptive contraceptives does not thereby create a constitutional right where none otherwise existed.

Petitioners' attempt to manufacture a constitutional right to a blanket notification requirement prior to the dispensing of all prescriptive and non-prescriptive contraceptive devices is based upon their characterization of the "rap session" and their characterization of the birth control pill. Neither characterization is accurate on the record. Neither supports their position as a basis for granting the Writ. The Clinic is voluntary. Parental involvement is encouraged, but not mandated. Petitioners have not shown, because in fact there is not, any inconsistency between the Court of Appeal's decision and the decisions of this Court in *Meyer, supra, Pierce, supra, Prince, supra* and *Yoder, supra.* Petitioners' first asserted reason for granting the Writ is unsupported, and the Writ should not be granted on that basis.

II. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THE DECISIONS OF THIS COURT WITH RESPECT TO THE RIGHT OF PRIVACY IN AREAS AFFECTING PROCREATION.

Although the decision of the Court of Appeals, finding no constitutional right in parents to notification, made unnecessary a holding grounded in the constitutional right of privacy in the area of procreation, that decision is also consistent with the cases from this Court reaffirming the right of privacy in women's decisions concerning childbearing.

The constitutional right to privacy in decisions affecting procreation, including the alternative of abortion, has clearly been established this Court to be beyond the purview of state statutes which interfere in this intimate area of personal privacy. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965); *Eisenstadt* v. *Baird,* 405 U.S. 438 (1977); *Roe* v. *Wade,* 410 U.S. 113 (1973); *Planned Parenthood of Missouri* v. *Danforth,* 428 U.S. 52 (1976); *Bellotti* v. *Baird,* 428 U.S. 132 (1976) (Bellotti I); *Carey* v. *Population Services International,* 431 U.S. 678 (1977) and *Bellotti* v. *Baird,* 443 U.S. 677 (1979) *(Bellotti II).*

Likewise, minors' constitutional right of privacy in decisions affecting procreation have been affirmed by this Court and impermissible state interference has been struck down. This Court's decisions with respect to the abortion alternative, as well as with respect to the decision to use contraceptives to avoid the devastating consequences of an unwanted pregnancy emphasizes the constitutional rights of minors and acknowledge the substantially greater problem presented to minors by an unplanned pregnancy. In this sensitive area, a state action which affectively imposes any sort of potentially blanket restriction has been struck down by this Court. *Bellotti II, supra, Planned Parenthood of Missouri* v. *Danforth, supra, Carey* v. *Population Services, supra, T. H.* v. *Jones,* 425 F. Supp. 873 (D. Utah, 1975) aff'd. in part 425 U.S. 986 (1976).

The only apparent area of disagreement exhibited by the separate opinions of this Court with respect to the

rights of minors in decisions affecting procreation is the extent to which the state may, to protect the state's legitimate independent interest in the well-being of its youth, impose requirements to the obtaining of abortions or contraceptives not imposed upon adults. That issue is not presented in this case. Michigan's interest in protecting minor females from the physical and emotional hazards of unwanted pregnancies resulted in this Clinic being established and dispensing contraceptives without parental notification. This is a legitimate state interest and policy. The policy of non-notification adopted by this Clinic is within the range of discretion afforded states, under the analysis of each of the various separate opinions in *Bellotti II, supra* and *Carey* v. *Population Services International, supra.*[5]

The decisions of this Court have recognized the rights of minors, with separate opinions issued as to the extent a state may, with respect to the state's interesst in the well-being of its minors, place a not undue burden on that right. The state here is not being challenged for imposing a burden. Here it is parents attempting to create a constitutional right of notice with the goal of substantially burdening the right to privacy of sexually active minors, thereby increasing the risks of an unwanted pregnancy, and, additionally, substantially burdening the attempt of the County and State to address this health problem. The decision of the Court of Appeals, or this Court, should this case be taken, supporting the decision of the Court of Appeals would not eliminate the litigation concerning the area of discretion open to the state to regulate minors' access to contraceptives. Likewise, a decision supportive of Petitioners could only serve as a stimulus to substantial further

[5]The chilling effect of a blanket notification requirement, besides infringing on the minor's right of privacy in decisions affecting procreation, would pose a substantial burden on the county's (state's) attempt to successfully address this pressing health problem. (R. 428, 429, 508, 509, 632)

litigation by or against states in an attempt to define their duties, or litigation instituted by minors to clarify their right to privacy. The "carrot" held out by Petitioners that by taking this case, the Court can put to rest the substantial range of litigation with respect to regulations affecting decisions in the area of procreation is simply not true.[6]

It is true, as pointed out by Petitioners, that there have been numerous decisions by this Court in the area of the right to privacy on decisions affecting procreation. It is equally true, as also pointed out, that there have been many articles on the subject. However, the articles cited do not represent "consternation and confusion" so much as they represent support for or criticism of the decisions of this Court. The fact that the problems of sexual activity in minors provides a fertile ground for articles on the subject does not thereby provide a reason for granting the Writ.

The decision below, finding *no* parental *constitutional right* to a blanket notification prior to the dispensing of prescriptive and non-prescriptive contraceptives to sexually active minors, is consistent with the numerous decisions of this Court with respect to a minor's right to privacy and the permissible area of state regulation. For this reason, also, the Petition for a Writ of Certiorari should be denied.

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[6]The similarity asserted by Petitioners of this case to *H._____ L. _____* v. *Matheson*, 604 P. 2d 907 (1979) (Utah Sup. Ct.), review granted 100 S. Ct. 1077 (1980) is not present. Here the Petitioners are asserting a constitutional right to notification. The issue in that case is the range of permissible state regulation, without infringing a minor's right of privacy, with a criminal penalty provided to the physician found in non-complicance with the statute in question.

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the Court should deny the Petition.

Respectfully submitted,
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APPENDIX

APPENDIX

Deposition of Marianne Davis, Program Administrator of the Ingham (Tri-County, Michigan) Family Planning Center, taken November 4, 1975 and appearing in the record below of this matter at pages 84 to 141. Excerpts thereof follow:

At page 93 of the Record the witness testified:

(By Plaintiff's counsel, Mr. McCormick):

"Q. Do you have many instances of a parent coming in with a minor to inquire?

A. Yes.

Q. - or to obtain the services?

A. Parents sometimes come with their daughters, um-hum."

(Page 96, Record)

"Q. And you don't particularly encourage, let's say, woman in their 20's who might come into the clinic to attend the rap session?

A. No. We would encourage a parent to come and attend.

Q. Any interest parent, you would encourage to come to the rap sesion, but you wouldn't encourage, let's say a 23 year old -

A. No. I wouldn't encourage, no."

(Page 97, 98, Record)

"Q. And do you have some parents who attend the rap sessions?

A. Occasionally. We have many parents at times who call and inquire so that they can send their child. And occasionally parents accompany."

(Page 99, Record)

"Q. In the rap session or when your people talk to these teenagers, do you initiate any discussion regarding parental attitude, regarding their parents' attitudes towards either contraception or their being sexually active?

A. That's one of the major topics, is discussing those kinds of things, talking about communications with parents. If the people at the rap session are having difficulty talking to their parents, the social worker would offer to help them in any way she could, including going to their home with the student and talking to them."

(Page 110, Record)

"Q. And at the rap sessions, is there any explanation given as to what the various forms of contraception are?

A. Yes.

Q. And their pros and cons?

A. Yes.

Q. From a medical point of view?

A. Yes.

Q. To a point of view of success rate?

A. Yes.

Q. And at some point in time, are individuals who are interested in being put on the pill or an IUD or any other form of birth control told of the possible side effects or possible medical problems that might arise in connection with the use of a particular method of birth control?

A. Yes. And the literature includes that, too, I believe.

Q. I see. Now, do you assume that they all read the literature?

A. No. That's the reason it's given verbally, also.

Q. Is this done at the rap session or when an individual comes in after an appointment to actually receive a prescription or whatever?

A. Both, really."

(Page 112, Record)

"Q. Are they asked or are they told about the blood clot phenomenon and the phlebitis phenomenon as the possible complications of use of the pill?

A. Well, I think these kinds of things are discussed in the rap session and again - see one of the questions - well, these kinds of things are covered by these different interviewers along the way."

(Page 113, Record)

A. I'm trying to get back to your question about when they could come back. And they are given at the most three month's worth of birth control pills. So at the end of three months, they come back if they want more birth control pills. If they don't want to come back, that's their decision too. And at that time we check them again and ask them a whole list of questions about possible symptoms that might have occurred as the result of taking two or three month's birth control pills. And their blood pressure and urine and blood are checked at that time."

(Page 117, Record)

"Q. In the course of these discussions, does the social worker then have to deal with the question of those teenagers who, from their family background, have scruples about being sexualy active, that are thinking about it or involved in it and are looking for some counsel as to how to resolve these problems? Do you deal with that kind of situation?

A. Yes. We would be available for any student to come and talk about this to try to work out some way of opening up communications with their parents and with any other person that might help them work out some communications with their parents. Sometimes that could be a brother or a sister, an older brother or sister or a minister or somebody like that."

(Page 118, 119 Record)

"Q. Are any individuals turned down; that is, told that you will not provide them - the clinic will not provide them with contraceptive devices or medication?

A. Yes.

Q. For what reasons?

A. For medical reasons."

(Page 126, Record)

"A. . . . The physical sheet is in there, and so all that kind of paper work information is taken care of. Her blood pressure is taken, a urinalysis is made, a hemotocrit test is made on her. She talks to a nurse or para-professional screening person about the information on the sheet that she has filled out to elaborate on any point that needs to be

emphasized and highlighted so that either the social worker, the nutritionist, or the doctor would pick up on the point and get some further information."

(Page 127, Record)

"A. The form we use is in addition to this form, [the State Department of Public Health Form], but it has much of the same kind of information on it as this. But it has more elaborate kinds of questions, goes into much more detail than that, and is a questionnaire about - the medical history one has the medical history of the patient and the medical history of the patient's mother and father and possibly any other close relative might be questioned, also."

(Page 128, Record)

"A. After the form is filled out, the patient talks to a screening interviewer. And they go over every form to make sure they're filled out and that we have adequate information or that we follow up on any information that might be - if the patient says she has, is a diabetic or then she might be asked what kind of medication are you on and go into that a little bit. Or if the screening interviewer takes her blood pressure and she has high blood pressure, she might inquire about other members of the family who have high blood pressure, varicose veins, headaches, all kinds of things like that we're looking for to see if that's in the medical history of the patient or her mother or father. So that interview would take care of in more detailed information or look at their medical history. Then to evaluate with the patient whether she would like to talk to the social worker or the nutritionist. She might be anemic and might not have known it. So we would maybe have her talk to the nutritionist about that.

Then notes would be written about those things."

(Page 130, Record)

"A. After they've talked to the social worker, the nutritionist, they are seen next by the doctor, who looks over all the records that have been compiled on the patient up to that point. And so then he also has an opportunity to talk to each patient and to go into any detail on any aspect of the records and the person that he wants to follow up on. And the examination is performed, and he prescribes some kind of birth control pill. There are several different strength. And the patient after that is seen by a nurse, who goes over the information about how to take the pill, what kind of physical changes to be aware of that could happen, and emphasizes calling our clinic if the patient has any questions or concerns about her physical well-being. The patient has another chance, as she has had all through the clinic, to ask any questions that she might have about anything connected with birth control or herself or her medical record. And so this nurse at the end of the whole line of people is a person who is trying to make sure that everything has been covered, that she understands, and that she knows what to do next."

(Page 131, 132, Record)

"A. I can't think of - well, we touched, on it, that a patient is given one, two, or three month's pills, and that's the judgment of the doctor. And at the end of that time, they are to come back if they want more pills. So we perform another set of tests on them at that time, and they are questioned very closely about their medical history during that interval. So that there is a constant kind of checkup, follow-up on her.

Q. If the girl doesn't come back, let's say - is the IUD the only form of birth control where you more or less insist the girl come back to the clinic?

A. Whether people come to our clinic or not is their choice. And it's advisable that they come, because it's advisable that women be checked periodically. We have Pap smears and so on, the whole picture there. But it's there choice whether they want to come back or not. We encourage them in every way, because we are to be monitoring their health in this area, and we can't unless they do come back."

Deposition of Gerald Holzman, M.D. Member of Michigan State University, Department acting as Medical Director of the Ingham (Tri-County Michigan) Family Planning Center, taken on November 4, 1975 and appearing in the Record of this matter below at pages 143 to 177.

(Page 155, 156, Record)

By Plaintiff's Counsel:

"Q. Now, do you make any kind of an evaluation of the level of understanding or maturity of the girl or woman who is there?

A. I'm not involved in that.

Q. Does the physician routinely do that?

A. Does the clinic?

Q. No. I am talking specifically about the role of the physician -

A. We've already established that, that the physician does not see every patient, so the obvious answer to that question is no. Does clinic personnel; yes, very definitely.

Q. Do you know - well, what do they do? What steps do they take to ascertain the maturity level of the girl?

A. I'm sorry, I misunderstood your question then, because I thought you said understanding.

Q. Okay. Her understanding of the procedures and her level of maturity, which I think are related.

A. There are multiple occasions when procedures, both - well, we're talking about several things at once. It's rather difficult. If we talk about the pill, we talk when you take the pill, et cetera, how it works, et cetera. That occurs at the teen rap. That occurs with the counselor. That occurs once a prescription is given. Those are not one way conversations or lectures, but they're dialogue. So if there is any perception by the person talking to that individual that they don't understand, I am talking now only about understanding, that person would be I believe, referred first to a social worker or counselor."

(Page 157, Record)

"Q. Is any kind of a test given to the girls to determine if they understood the medical information that's been given to them and the social information with respect, for example, to contraindications with respect to the possible complications inherent in certain forms of birth control?

A. Are you talking about a conversation and an ascertainment of a person's understanding, or are you talking about a paper and pencil -

Q. Paper and pencil.

A. Again, I don't know - no, there is no testing for any one at any age.

Q. Okay. You've got no paper and pencil. Are they questioned at all?

A. Yes.

Q. And who would do that?

A. The people involved as I've just stated.

Q. This would be at the rap sessions?

A. I'm saying at the rap sessions and on down the line."